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JOSEPH F. SPANIOL, JR.
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No. 85-1316

IN THE

Supreme Court of the United States

October Term, 1985

PULASKI COUNTY SPECIAL SCHOOL DISTRICT NO. 1, et al.,

Petitioners,

v.

LITTLE ROCK SCHOOL DISTRICT, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SUPPLEMENTAL BRIEF OF PETITIONER PULASKI COUNTY SPECIAL SCHOOL DISTRICT NO. 1

PHIL C. NEAL*
208 South LaSalle Street
Chicago, Illinois 60604
(312) 269-8000
ALSTON JENNINGS
2200 Worthen Bank Building
Little Rock, Arkansas 77201
(501) 371-0808
Attorneys for Petitioners
**Counsel of Record*

OF COUNSEL:
NEAL, GERBER & EISENBERG
208 South LaSalle Street
Chicago, Illinois 60604
WRIGHT, LINDSEY & JENNINGS
2200 Worthen Bank Building
Little Rock, Arkansas 77201

CHAS. P. YOUNG CHICAGO

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SUPPLEMENTAL BRIEF OF PETITIONER PULASKI COUNTY SPECIAL SCHOOL DISTRICT NO. 1

Pursuant to Supreme Court Rule 22.6, petitioner Pulaski County Special School District No. 1 files this supplemental brief to bring to the attention of the Court a procedural development in this case that might make it appropriate for the Court to postpone consideration of the Petition for Certiorari.

On May 21, 1986 petitioner filed with the Court of Appeals for the Eighth Circuit a Motion for Recall and Clarification of Mandate. The circumstances giving rise to that motion are as follows:

In its decision of November 7, 1985, review of which is sought by the petition, the Court of Appeals remanded the case to the district court for determination of a remedy in accordance with the directions of the Court of Appeals. The remedy ordered by the Court of Appeals included certain specified alterations in the boundaries between the Little Rock School District and the Pulaski County Special School District, but with the provision that the district court, after hearing, might order different boundary adjustments having

equivalent effects. (See Appendix to the Petition for Certiorari, pp. A-59, A-60.)*

The mandate of the Court of Appeals has not been stayed. On remand, the district court ordered the parties to submit proposed remedial plans in conformance with the opinion of the Court of Appeals. The parties submitted their respective plans in early March, 1986.

The Little Rock District has taken the position, in answer to interrogatories and otherwise, that under the Court of Appeals' mandate the boundaries of the Little Rock School District will automatically expand in the future if and when the boundaries of the City of Little Rock expand, i.e., that the school district and city boundaries are to remain coterminous permanently. Little Rock's proposed plan is expressly premised on that interpretation of the Court of Appeals' decision.

The Pulaski District contends that the Court of Appeals' decision contemplated a single present remedy for the constitutional violations found and that it did not—and could not, consistent with this Court's decisions—order future changes in the school district boundaries, since any such future alterations would have to be based on findings of subsequent interdistrict constitutional violations. The Pulaski District has submitted a plan based on that understanding of the Court of Appeals' order.

The district court scheduled hearings on the respective plans to begin on June 16, 1986. In the belief that it could not have a fair hearing on remedy absent clarification of this fundamental issue as to the meaning of the Court of Appeals' decision, the Pulaski District moved the district court for a pre-hearing determination of the issue. The district court denied the motion.

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* The Consolidated Brief in Opposition filed by respondents Lorene Joshua, et al. states (p. 15, n. 5): "The appellate court's order leaves open the possibility that no boundary adjustments will be made." The statement is directly contrary to the Court of Appeals' order. The basis for the statement is not apparent to petitioner.

Accordingly, the Pulaski District has moved the Court of Appeals to recall and clarify its mandate. That motion is pending.

Should the Court of Appeals interpret its decision in the manner contended for by respondent Little Rock School District, a further important question meriting review by this Court would be presented—namely, whether a federal court may set aside state-law procedures for altering school district boundaries prospectively, absent any showing (since no such showing is possible as to the future) of any constitutional violation requiring such overriding of state law.

Under these circumstances, petitioner respectfully suggests that the Court may wish to defer consideration of the petition for certiorari in this case pending the further action of the Court of Appeals.

Respectfully submitted,

PHIL C. NEAL*
208 South LaSalle Street
Chicago, Illinois 60604
(312) 269-8000

ALSTON JENNINGS
2200 Worthen Bank Building
Little Rock, Arkansas 77201
(501) 371-0808
Attorneys for Petitioners

**Counsel of Record*

OF COUNSEL:
NEAL, GERBER & EISENBERG
208 South LaSalle Street
Chicago, Illinois 60604

WRIGHT, LINDSEY & JENNINGS
2200 Worthen Bank Building
Little Rock, Arkansas 77201

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